

Water Commissions/Districts

WATER COMMISSIONS/DISTRICTS

WC1

April 17, 2000

Pat Schumacher
U.S. Bureau of Reclamation
835 East Second Avenue
Durango, CO 81301

Dear Mr. Schumacher,

Here is the statement of the Animas-La Plata Water Conservancy District on the 2000 Draft Supplemental Environmental Impact Statement regarding the Alternative Plan for the construction of the Ridges Basin Reservoir.

Sincerely,

A handwritten signature in dark ink, appearing to read 'R. Griswold', is written over the word 'Sincerely,'.

Richard K. Griswold, President

COMMENTS OF THE ANIMAS LA PLATA-WATER CONSERVANCY DISTRICT ON THE DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT FOR THE ANIMAS LA PLATA PROJECT

The Animas La Plata Water Conservancy District ("District") appreciates the opportunity to review and comment on the Draft Supplemental Environmental Impact Statement ("DSEIS") for the Animas La Plata Project ("ALP").

I. INTRODUCTION

The District would like to extend its appreciation to the employees of the Bureau of Reclamation ("BOR") and the Department of the Interior who worked so diligently to evaluate the environmental consequences of various alternatives to resolve the Colorado Ute Indian water rights settlement and the relationship of that settlement to various features of the ALP. The DSEIS was completed in an efficient manner, which produced a document of thoroughness and clarity. The matters described and analyzed in the DSEIS are of critical importance to the citizens of southwestern Colorado and northwestern New Mexico, both Indian and non-Indian alike. The preferred alternative identified in the DSEIS as the best resolution of the remaining requirements of the Colorado Ute Indian Water Rights Final Settlement Agreement dated December 10, 1986, serves to effectuate the Settlement Agreement in a manner that is acceptable to the two Ute Tribes.

The District will not seek to reiterate the history of Settlement Agreement nor the current provisions of the Colorado Ute Indian Water Rights Settlement Act of 1988 (104 Statute, 2973). One or both of the Colorado Ute Indian tribes will more thoroughly describe these documents and the negotiations which led to them. Suffice it to say, that the non-Indian community in southwestern Colorado strongly supports a settlement of the remaining claims of the two Ute Tribes in a manner that is acceptable to the Tribes, namely through the provision of storage water in a reservoir deriving its supply from the Animas River. The District incorporates and adopts the explanation of the settlement submitted by the Tribes.

II. CLEAN WATER ACT COMPLIANCE

Without engaging in extensive argument, the District submits that the BOR has adequately evaluated the consequences of the preferred alternative to satisfy the requirements of the Clean Water Act in every respect necessary to obtain a Section 404(r) exemption upon the adoption of legislation by Congress. The DSEIS and the preferred

alternative are sufficiently analyzed to fully satisfy the seven requirements which have been determined to be a prerequisite to the granting of a 404(r) exemption.

Similarly, the analysis contained in the DSEIS is adequate to satisfy the requirements of 404(b)(1) of the Clean Water Act. To the extent either Tribe comments more fully on these issues, the District incorporates and adopts these comments herein.

III. SELECTION OF ALTERNATIVE 4

The District concurs with the Bureau's determination that Alternative 4 ("RA4") is the most appropriate alternative, both environmentally and technically. Although the District is certainly not satisfied with the determination to eliminate all irrigation features from the original ALP and to eliminate the facilities necessary to deliver much needed water supplies into the critically water short La Plata River Basin, it is nonetheless willing to accept the current circumstances and desires to cooperate with its Indian neighbors in seeking a permanent solution to the Colorado Ute Indian reserved water rights claims. Of the alternatives analyzed, RA4 is far and away the most acceptable alternative. First, it is the only alternative which fully satisfies the promises made in the Settlement Agreement and the subsequent Colorado Ute Indian Water Rights Settlement Act of 1988. Secondly, it is the only alternative which meets the demands of the two Ute tribes and, therefore, is the only alternative which would provide a basis to complete the settlement and avoid expensive, divisive and destructive litigation. Third, it is the only alternative which serves to integrate the water supply needs of the Indian and non-Indian communities in the Four Corners region of this country, including municipal and industrial water supply requirements for northwestern New Mexico, for the Navajo Nation, for the two Ute Tribes, and for the non-Indian community in La Plata County, Colorado. Contrary to the suggestions of some, RA4 would fully comply with all of the biological requirements of endangered species in the San Juan River system, a fact that has been continually identified by the U.S. Fish and Wildlife Service through a series of biological opinions. The District recommends that the BOR adopt RA4 as its preferred alternative when the final DSEIS is finalized.

IV. NON-STRUCTURAL ALTERNATIVE

Substantial analysis is devoted to Alternative 6 ("RA6"), the non-structural alternative in the DSEIS. The District does not believe that this alternative will adequately address the substance of the Colorado Ute Indian water rights settlement. In the first place, the Bureau should not lose sight of the fact that the settlement was not a unilateral determination by the federal government or the two tribes concerning the basis for settlement, but was, rather, a complicated document resulting from lengthy negotiations in which both Indian and non-Indian interests made concessions. The

underlying purpose of the settlement was to preserve in non-Indian hands the water supplies which are currently beneficially used by non-Indians pursuant to Water Court decrees entered by the Colorado courts. RA6 would have the federal government attempt to impose a solution to the remaining Ute Indian water rights claims on the non-Indian community that would be at variance with the expressed and stipulated solution existing in the Settlement Agreement. The remaining signatories to the Settlement Agreement would not be willing to accept a significant change to that document which contemplated the elimination of non-Indian water rights rather than their protection. Absent the concurrence of all of the signatories to the Settlement Agreement, a non-structural alternative will not result in a resolution of the Tribes' reserved water rights claims, no matter what the Project opponents may say.

The proponents of RA6 fail to acknowledge the limitations that are inherent in a solution that involves the Tribes purchase of non-Indian water rights. The non-Indian water rights that exist in the San Juan Basin in Colorado, like water rights throughout Colorado, carry with them certain inherent limitations. All of these water rights have been decreed for a specific use, over a defined period of time and in a specific amount. The rights are limited to their historic use and may not be changed to other points of diversion, other places of use, other types of use, or other times of use without obtaining a decree from the Colorado Water Court permitting such changes. Such a decree would involve the imposition of additional terms and conditions designed to protect the historic regimen on the stream system and the rights of every other water right owner on the stream at issue. Unless the Tribes purchase water and land located in exactly the location of future Tribes use and decreed for exactly the purposes to which the Tribes intend to use the purchased water in the future, there would be significant uncertainty whether any particular water rights acquisition would, in fact, produce a quantity of water available at a time and location that would suit the uses for the Tribes. There is no way to avoid that uncertainty, unless and until specific water rights are acquired, Colorado Water Court proceedings are held, and decrees obtained. This is a time consuming process, but until the process is completed, no certainty would exist for the Tribes, the Federal government, or the non-Indians.

Finally, there is currently no way to provide Tribes with the priority date or the general reservation purposes of an Indian reserved water right upon a purchase of a non-Indian water right. The Ute Tribes can acquire only what the seller had, nothing more. This leaves the Tribes with significantly less than they would otherwise expect to receive under an alternative that delivered actual stored water to the Tribes for reserved water rights purposes. The District is puzzled by a suggestion that the Colorado Ute Indians' water rights claims be settled using a mechanism such as RA6, which produces exactly the result that the Tribes and their non-Indian neighbors have sought to avoid.

The District considers RA6 unworkable mechanically and entirely uncertain to the Tribes and their non-Indian neighbors in meeting the underlying principles of the Settlement Agreement.

V. ATTACHMENT E

The District continues to be concerned about the cost allocation contained in Attachment E. We trust that the allocation described in Attachment E is, in fact, “preliminary” as stated. There are a number of questions and concerns which we wish to bring to the attention of the BOR with regard to the preliminary cost allocation as follows:

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1. On Table B, there is a proposed allocation under “Specific Costs” of \$962,290 for the addition of pumping facilities for the City of Durango. The decision whether or not to include pumping facilities for Durango within the Ridges Basin Pumping Plant has not been finally made, and we trust that this amount would be eliminated from any final calculations, if, in fact, those pumping facilities were not included.

2

2. In the description of Specific Costs for the project in Table 5-1, \$6.7 million is shown for reservoir land acquisition and \$2.5 million for pumping plant acquisition. We find these dollar amounts to be excessive, considering the fact that the Reclamation already owns 4,638 acres at the location of the reservoir and needs to acquire only approximately 1,600 additional acres for the entire project. Secondly, the pumping plant location is on land which is currently owned in fee by the District, which is obligated to provide the land to the project when construction commences. These stated land acquisition costs are either being double counted against the \$75.9 million in sunk costs or they are overstated because some of the property required has already been paid for.

3

3. Table 5-1 in Attachment E also shows a value of \$10.5 million for relocating pipelines. We believe that this value is excessive because one of the major pipelines through the reservoir area, constructed by Mid-America Pipeline Company, is constructed on an easement which requires Mid-America to relocate these facilities at its own cost if and when a reservoir is constructed.

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4. The construction costs included and described on Table A of Attachment E show sunk costs of \$75.7 million. Certainly, it is inappropriate to include costs experienced by BOR in evaluating an enormous irrigation project, including the environmental consequences of an irrigation project, preliminary planning and design for the irrigation features of the project, all of the activities associated with a much larger reservoir necessary to support such a project when, in fact, that project is no longer to be

WC1-1 The cost allocation provided in Attachment E has been updated to reflect the most current understanding of specific costs allocable to the City of Durango.

WC1-2 Values for land acquisition in the table have been changed to reflect the most current valuation of additional lands needed for the reservoir and donation of the pumping plant site. In addition, some double counting was uncovered in earlier estimates and the cost tables have been changed accordingly.

WC1-3 The amount shown is for relocating four pipelines and an electrical transmission line. Northwest Pipeline Corporation's 26-inch diameter pipeline and the Greeley Gas Company's 10-inch diameter pipeline and its tie-in to the Northwest pipeline will be relocated as a project cost. The two gas product lines owned by Mid-American Pipeline Company will be relocated at their expense in a right-of-way provided by Reclamation as a project cost. Based on the uncertainties of the final relocation alignment, the \$10.5 million cost estimate for this item is reasonable.

WC1-4 The cost allocation provided in Attachment E has been updated to reflect the most current understanding of costs to be reimbursed by the project beneficiaries.

constructed. Only those sunk costs which are directly associated with the environmental compliance for and planning of Ridges Basin Reservoir, the inlet conduits, and pumping plant ought to be included as sunk costs for purposes of repayment.

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5. Finally, the construction budget proposed in Attachment E suggests a thirty percent (30%) contingency and a twenty percent (20%) overhead assessment on the construction. Both of these values are at least twice as high as any that would be proposed for any other construction project and unnecessarily produce excessive and unwarranted project costs against which any payments for non-Indian M&I water would have to be judged. These values need to be adjusted to reflect more realistic construction practices.

CONCLUSION

The District would again like to congratulate the BOR on a very professional and even-handed effort to produce a DSEIS that considers all of the relevant options and alternatives, evaluates each of them, and identifies a preferred alternative that creates the least amount of environmental damage, while, at the same time, satisfying the requirements of the Settlement Agreement and the demands of the two Colorado Ute Indian Tribes. We encourage you to maintain your focus on the preferred alternative while completing the final SEIS, designated as RA4, and to proceed to complete the environmental review process and begin construction. We encourage you not to be dissuaded by the detractors in your efforts to complete this very important settlement.

THE ANIMAS-LA PLATA WATER CONSERVANCY DISTRICT

WC1-5 The cost estimate for the project features are "feasibility estimates". As such there are uncertainties in the quantities of excavation and construction materials, site conditions, construction methods, and design changes that may be required. The 20 percent construction contingencies are intended to account for these uncertainties. An amount of 30 percent is added to the estimated construction costs to account for non-construction costs. These include costs to evaluate geological conditions, perform the engineering design work, prepare specifications, and administer construction contracts. This added amount is reasonable in relation to other similar projects where safety to the public is involved.

200

Florida Water Conservancy District
P.O. Box 1157
Durango, Colorado 81302
303-247-5332

Directors:
Lloyd N. Hess, President
Philip Craig, Vice President
Terry Palmer, Secretary/Treasurer
Richard Ballantine
Charley McCoy

John Ey, Superintendent

February 24, 2000

Mr. Patrick Schumacher,
Project Manager
U. S. Bureau of Reclamation
815 E. Second Ave., 3rd Floor
Durango, Co. 81301

re: Comments Animas-La Plata Project

Dear Sir:

The board of directors of Florida Water Conservancy District has reviewed the Draft Supplemental Environmental Impact Statement submitted to the District on January 27, 2000 and has the following comments:

1. The board is unanimously positive as to Refined Alternative 4 as set forth in the statement.
2. The reasons for the board's position are:
 - a. It best satisfies the requirement of the Indian Water Rights claim under the Water Rights Settlement act.
 - b. It would be the most expedient means of accomplishing the purpose set forth in a.
 - c. There would be far less impact on the wetlands in the San Juan River Basin than any of the other alternatives.
 - d. The costs of this alternative are easily determinable as compared to the costs of the other alternatives.
 - e. It preserves the use of Animas River water for use in the San Juan Basin through storage of "flood" waters. None of the other alternatives accomplishes this except raising the height of Lemon Dam. The refined 4th alternative provides a much more reliable source of water since the Florida River is a critical stream.
 - f. The impact on the tax revenues in Archuleta, La Plata, Dolores, and Montezuma Counties under any plan to purchase

WC-2 You have captured in your letter some of the important points concerning the selection of Refined Alternative 4 as the preferred alternative.

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irrigated lands by or for the Ute Indian tribes will be great in that it will remove 27% of the non-Indian irrigated lands from the tax rolls in those counties.

g. If water is to be moved from the lands so purchased, the gathering system will be very expensive and all such matters would require action by the water courts. Refined alternative 4 would require little or no action in the water courts.

h. All alternatives except refined alternative 4 amount to robbing Peter to pay Paul. Imagine the result of moving the water off the irrigated lands in order to make a more profitable use thereof! Imagine, also, the return of the irrigated lands to desert conditions. This is to say nothing of the transportation loss to the remaining irrigated lands or to the many return flow adjudications.

i. Letters to the editor of the Durango Herald have complained about destroying the Animas as a wild and scenic river. That misses the truth totally. If the proposal were to build a dam to dam the waters of the Animas River, the statement would make some sense. Refined alternative 4 provides for an off stream dam and reservoir with pumping to take place during high water periods.

j. Clearly refined alternative 4 provides the most feasible means of providing the water for the Ute Indian tribes.

k. Refined alternative 4 utilizes a portion of Colorado's unused portion of the Colorado River water as set forth in the Upper Colorado River Basin Compact.

Suffice it to say, in repetition, that the Board of Directors of Florida Water Conservancy District is solidly in favor of refined alternative 4 of the Draft Supplemental EIS.

Very Truly yours,


Philip S. Craig
President

APR 21 2000

Mancos Water Conservancy District

JACKSON GULCH RESERVOIR

Office of Superintendent

April 11, 2000

Pat Schumacher
Four Corners Division Manager
Bureau of Reclamation
835 E. 2nd Street
Durango, CO 81301

Gary Kennedy
42888 County Road N
Mancos, Colorado 81328
(303) 533-7325

Dear Mr. Schumacher:

The Mancos Water Conservancy District would like to again state our strong support of the Animas-La Plata Project. The importance of water projects in Colorado cannot be over-stated. Water is rapidly becoming an extremely contentious issue and will become more so in the future but the past cannot be overlooked either.

The fact that there will be additional demand for water in the years to come cannot be ignored. Water storage projects will continue to be in demand in the future as more water is required for the growing population and the pressure builds to change irrigation water to municipal use. Therefore, we support construction of the Animas-La Plata to begin as soon as is possible.

The Colorado Ute Tribes have been very patient throughout this process. The promise has been made, agreed upon, studied and discussed. Action is the last step. The time is now. The consequences of not constructing the project are far more devastating than the actual project completion will prove itself to be; therefore,

Whereby, the two Colorado Ute Tribes and their non-Indian neighbors have agreed to the modified Animas-La Plata and the construction of such; We, the Board of Directors of the Mancos Water Conservancy District, do also support enactment of bill HR-3112 to implement the construction of the modified Animas-La Plata Project.

Thank you for allowing us to comment on this vitally important issue.

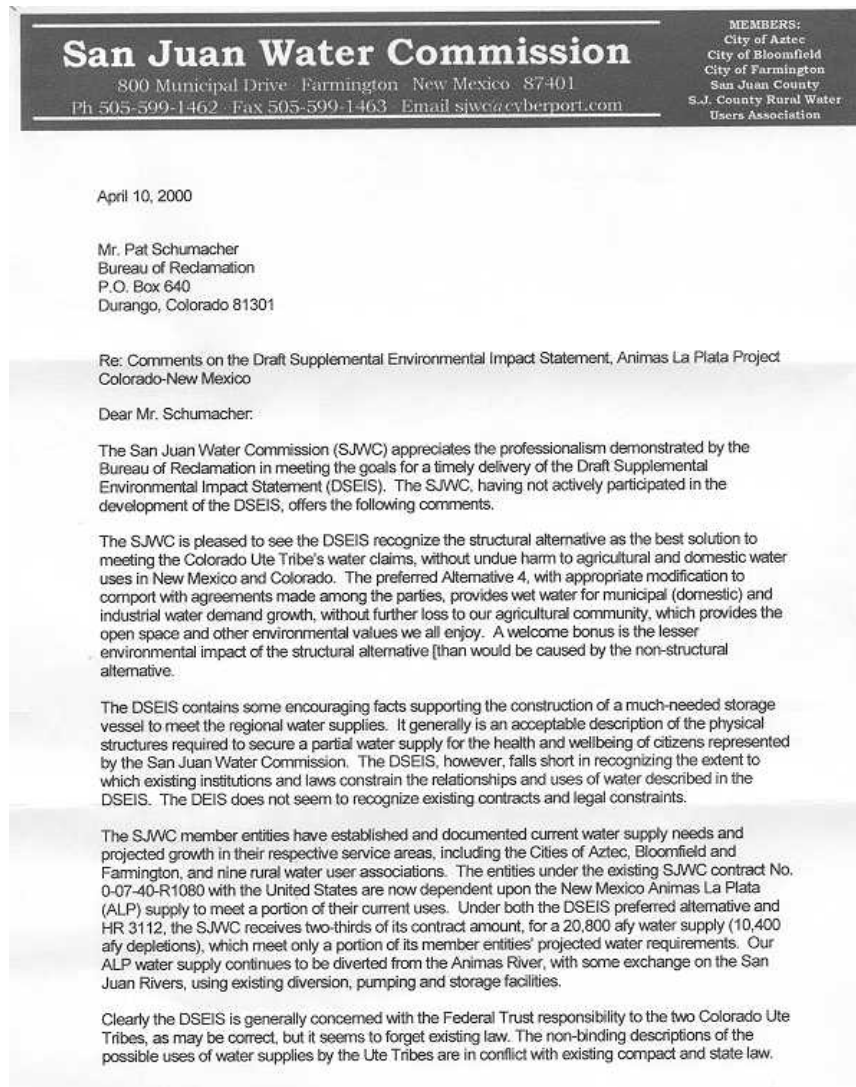
The Board of Directors of the Mancos Water Conservancy District:

Thomas K. Colburn
Noland W. Alexander

Gary Kennedy, Superintendent of the Mancos Water Conservancy District

Gary Kennedy

WC3-1 Comment noted.



WC4-1 The support of the State of New Mexico for the ALP Project and their concerns relating to interstate leasing would be important to the implementation of the ALP. The complicated nature of the various interstate stream compacts and the obstacles to be overcome is discussed in Section 2.1.3 of the FSEIS. If a future regional water supply concept became a reality, the State of New Mexico would be involved in the implementation of the leasing of waters from the Colorado Ute Tribes to entities in New Mexico.

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The draft proposes in the non-binding discussion a power plant to be located on the New Mexico portion of the Ute Mountain Ute Reservation, this would be using New Mexico water to satisfy Colorado's settlement of claims. This should be relocated or deleted.

In Chapter 2 and perhaps other places, there are charts that indicate that some of the 13,000 AF of water to be acquired could be obtained in New Mexico. Acquisition of existing supplies in New Mexico would again be using New Mexico water to settle Ute claims in Colorado.

Again, in Chapter 2 and perhaps in other places, there are tables indicating that the Colorado Utes in the non-binding discussions may lease some of their water to New Mexico. Current law would again credit such uses against New Mexico supply. The Settlement agreement also considers such action in relation to Colorado Law, which does not allow such marketing. Admittedly, the draft recognizes this fact. The charts should be modified to correct the implication.

3

The Navajo Nation's benefit provided by the new municipal pipeline should reasonably constitute full satisfaction of the Navajo's participation in the Animas La Plata Project. The small reduction in water availability is more than offset by the delivery system, which will be constructed at no cost for the capital portion. The DSEIS should clearly recognize that the Navajos will make no other claims on the ALP supply.

4

Our review notes the implication that new contract arrangements will be needed for development and operation of the ALP (page 1-12). The SJWC currently has a valid contract (No. 0-07-40-R1080) on which we rely today for water deliveries. Only minor modifications need to be made in the contract to define the changing circumstances related to operation of storage facilities. The existing contract has terms that describe our cost, and operation procedures that continue to be operative and effective.

Review the ALP Cost Allocation in DSEIS Volume 2 shows that it is preliminary and that specific project repayment project cost obligations will need to be developed as this process moves forward. We note and appreciate the statement that if up-front payments are authorized to be made (HR 3112), such payments will eliminate repayment as well as interest during construction. We also note the DSEIS correctly points out that Fish and Wildlife, and Recreation cost are non-reimbursable under Reclamation law. We note also that the DSEIS includes in its preliminary projection of capital cost for the SJWC some portion of \$75.7 million in sunk costs attributable to three decades of developing an irrigation project; Those costs, pursuant to our contract, are not allocable to us. We look forward to working more on the cost allocation issue, and we appreciate the fact that the allocation is preliminary.

Sincerely,



L. Randy Kirkpatrick

Executive Director
San Juan Water Commission

WC4-2 Comment noted. The water delivered to the power plant in New Mexico would involve water rights assigned to the Colorado Ute Tribes but the water would come from the State of Colorado. This water would be stored in Ridges Basin and released downstream to be pumped from the San Juan River. There may be needed modifications to legal constraints which relate to assigning the depletions to the State of Colorado. If the legal constraints cannot be overcome, the power plant would be moved into Colorado.

WC4-3 It is not appropriate to speculate in the FSEIS what the Navajo Nation may do in the future with respect to their water right claims on the San Juan River.

WC4-4 Although the SJWC has a valid contract with the United States, the contract may need to be amended to reflect the downsized benefits realized in the preferred alternative. There are other beneficiaries that may need to enter into similar appropriate contractual arrangements. Consultations with the affected parties are necessary to identify appropriate allocations of project costs. The cost allocation discussions in Attachment E have been updated to reflect the most current derivation of assignment of costs to the various entities.

THE SOUTHWESTERN WATER CONSERVATION DISTRICT

A Municipal District Organized Under State Law For Development And Conservation Of The Waters In The
SAN JUAN AND DOLORES RIVERS AND THEIR TRIBUTARIES
IN SOUTHWESTERN COLORADO

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April 14, 2000

VIA Hand Delivery

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Durango CO 81301

Re: Comments on the Draft Supplemental Environmental Impact Statement
("Draft SEIS") for the Animas-La Plata Project

Dear Mr. Schumacher:

On behalf of the Southwestern Water Conservation District, I am providing these remarks on the Draft SEIS. I am a lifelong resident of La Plata County, a member of the Board of Directors of the Animas-La Plata Water Conservancy District and President of the Board of Directors of the Southwestern Water Conservation District. I was a member of the Colorado Water Conservation Board for over 20 years. I have a personal knowledge of the tremendous effort involved in the negotiation of the Colorado Ute Indian Tribes' Final Water Rights Settlement Agreement of 1986.

I warmly acknowledge the accomplishment of the Bureau of Reclamation in preparing the Draft SEIS for the Animas-La Plata Project in accordance with the announced time line. I support Reclamation's selection of Alternative 4 as the preferred alternative. I also support H. R. 3112, the Colorado Ute Settlement Act Amendments of 1999 (the "Settlement Act Amendments"). The Settlement Act Amendments are intended to finalize the reserved water rights claims of the Southern Ute Indian and Ute Mountain Ute Tribes. The reserved water rights of the two Tribes were the subject of previous legislation, the Colorado Ute Indian Water Rights Settlement Act of 1988. The 1988 Act had as its foundation the construction of the Animas-La Plata Project ("A/LP") to provide substantial water supplies to the two Ute Tribes and the adjacent non-Indian communities, both for irrigation uses in the La Plata basin and for municipal and industrial purposes in Colorado and New Mexico.

The Settlement Act Amendments are the result of constraints imposed on the

Mr. Pat Schumacher
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original A/LP by federal environmental laws, principally the Endangered Species Act and the Clean Water Act. The Settlement Act Amendments, therefore, contemplate a much smaller project than was anticipated in the original settlement to resolve the Tribes' claims.

The Settlement Act Amendments cannot be understood, however, without an understanding of the major efforts of the two Ute Tribes and their non-Indian neighbors, together with the states of New Mexico and Colorado, to provide the Tribes with a reliable future water supply without taking water away from the communities, farmers and ranchers who have been using the existing supplies for generations. The negotiations to resolve the Tribes' reserved water rights claims, beginning in 1985, focused on storage as the key to obtaining the Tribes' goals, with the A/LP to provide the Tribes with their water while also providing a vitally needed domestic water supply to local municipalities and irrigation water for farmers in the La Plata basin.

The reduced project under H.R. 3112 and Alternative 4 would provide agreed-upon amounts of municipal and industrial water to the two Tribes, the Navajo Nation and to the local cities and water districts but would not deliver irrigation water to the La Plata basin. The decision of non-Indian water users to give up A/LP irrigation facilities and to resize the Ridges Basin Reservoir so as not to provide water for agricultural uses, represents a major community sacrifice to resolve the Tribes' reserved water rights claims.

The preferred alternative has the following features:

A pumping plant to provide Endangered Species Act approved water diversions from the Animas River to a scaled back reservoir located 2 miles away from the Animas River (DSEIS p. 2-103, 104).

Although minimum flows at the pumping plant will be decreased by 2%, they are actually increased by 20% at the confluence with the Florida River, and are substantially increased and stabilized at the confluence of the Animas River with the San Juan River (DSEIS pp. 3-21 and 22).

The Animas River trout fishery will not be affected by the A/LP (DSEIS pp.3-95 and 96).

There will only be a 4.5% average lost opportunity for area canoers, rafters and kayakers and only six commercial rafting days could be lost in dry years, which occur 50% of the time (DSEIS p. 3-178).

While 1,500 acres of upland habitat would be lost, 1,549 acres of such habitat are to be acquired as mitigation prior to A/LP construction (DSEIS p.3-68).

While 134 wetland acres would be lost, 200 wetland acres to be acquired as mitigation for A/LP construction (DSEIS p. 3-69).

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All applicable Federal laws relating to repayment will be honored.

The exhaustive analysis of the Draft SEIS concluded that a reduced storage facility in the Four Corners area significantly increases flexibility for the benefit of endangered species (DSEIS, p.2-37), the Colorado Ute Tribes, as well as the Jicarilla Apache Tribe and the Navajo Nation.

With Reclamation's support in the Final SEIS for Alternative 4, H.R. 3112, which is supported by the two Ute Tribes, the states of Colorado and New Mexico, the San Juan Water Commission, and the Colorado water districts that were parties to the original settlement, can proceed. To bring together the components of the Final SEIS and H.R. 3112, however, some tightening of the cost allocations in the Draft SEIS is needed.

1. Reclamation should review the entries on page E-32 for possible double counting.

a. On page E-32, the \$9.2 million dollars allocated to buy land for the A/LP pumping plant and Ridges Basin Reservoir under Alternative 4, should be eliminated. The Animas-La Plata Water Conservancy District already owns the land for the pumping plant which the District will make available to Reclamation at no cost. The original cost was paid for by Superfund dollars. The "new costs," identified in Reclamation's publication, ANIMAS-LA PLATA PROJECT, VOL. 3, FEBRUARY 2000, for Alternative 4 should, therefore, be reduced by \$9.2 million, making Alternative 4 cheaper than the "non-structural" Alternative 6 by about \$4 million.

b. Since Reclamation purchased the land for Ridges Basin Reservoir many years ago, the cost for that land should be included in the "sunk costs" category.

2. Page E-32, Table 5-1, lists \$10.5 million for relocating gas pipelines and electric lines. In anticipation of the Project's construction, Mid America Pipeline Co. ("MAPCO") agreed to relocate its pipeline at MAPCO's expense; therefore, this \$10.5 million cost should be reduced significantly, by 24% to 40%, to account for MAPCO's contribution.

3. Alternative 4 costs include a huge "construction contingency" and extensive design, inspection, administration, legal overhead costs which increase identified field costs from about \$125.4 million to about \$190.5 million. Such costs should comport with industry standards and, therefore, require reduction.

4. The repayment costs for non-Indian municipal and industrial water should be reviewed. All costs for the original Project features not included in the reduced A/LP should be considered non-reimbursable and subtracted from the "sunk costs." This includes approximately \$50 million for irrigation features. It is a double slap in the face for the potential non-Indian irrigators under the original A/LP to now be charged for irrigation Project features which were eliminated from the A/LP at great sacrifice to resolve the Tribes' reserved water rights claims.

WC5-1 Values for land acquisition in the table have been changed to reflect the most current valuation of additional lands needed for the reservoir and the pumping plant site. In addition, some double counting was uncovered in earlier estimates and the cost tables have been changed accordingly in the FSEIS. See Attachment E of Volume 2 of the FSEIS.

WC5-2 The amount shown is for relocating four pipelines and an electrical transmission line. Northwest Pipeline Corporation's 26-inch diameter pipeline and the Greeley Gas Company's 10-inch diameter pipeline and its tie-in to the Northwest pipeline will be relocated as a project cost. The two gas product lines owned by Mid-American Pipeline Company will be relocated at their sole expense in a right-of-way provided by Reclamation as a project cost. Based on the uncertainties of the final relocation alignment, the \$10.5 million cost estimate for this item is reasonable.

WC5-3 The cost estimates for the project features are "feasibility estimates". As such there are uncertainties in the quantities of excavation and construction materials, site conditions, construction methods, and design changes that may be required. The 20 percent construction contingencies are intended to the estimated construction costs to account for non-construction costs. These include costs to evaluate geological conditions, perform the engineering design work, prepare specifications, and administer construction contracts. This added amount is reasonable in relation to other similar projects where safety to the public is involved.

WC5-4 The cost allocation provided in Attachment E has been updated to reflect the most current understanding of costs to be reimbursed by the project beneficiaries.

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5. The cost to the Animas-La Plata Water Conservancy District of \$932,000 for City of Durango pumping, plus \$30,290 in interest during construction, for a total of \$962,290, needs to be eliminated if pumping facilities for Durango are not to be included in the Ridges Basin Pumping Plant.

The "sunk costs," therefore, should be reduced by two-thirds with at least \$60.7 million in costs saved to water users: at least \$7.7 million in land acquisition costs, \$3 million for pipeline relocation, and \$50 million in the sunk cost category. Adding the 30% contingency and 20% overhead to this \$60.7 million extends the savings to \$94.7 million. This would reduce construction costs to the Animas-La Plata Water Conservancy District from over \$11,500,000 to about \$6,000,000.

Non-structural Alternative 6 has been rejected by the two Ute Tribes and in the Draft SEIS for good reason:

1. to purchase water and land from "willing sellers," the price of land and water to the Tribes will skyrocket once the initial offers to purchase are made, as happened to the National Park Service with the Redwoods National Park, the Point Reyes National Seashore, the Sleeping Bear Dunes National Lakeshore, and other parks created through purchase of private lands.

2. Alternative 6 is actually the most costly and potentially the most environmentally damaging course of action. To achieve the intended use of their reserved water rights, the Tribes will need to dry up thousands of acres of productive farm land. The non-structural alternative was exhaustively analyzed and found to cause up to 1,200 acres of wetland losses (DSEIS p. 3-74). The non-structural alternative was also found not to reduce costs and not to have a reasonable probability of success.

3. Since the Tribes will be able to purchase only the right to use water with a specific priority date, on specific land, for specific the decreed purposes, almost certainly irrigation purposes, and since they wish to use the water for M&I purposes and at locations other than those decreed for irrigation, the Tribes will have to apply to Colorado water court to change the use and place of use for the purchased water. To use their changed water rights for M&I purposes year-round, the Tribes will need storage, even under Alternative 6. Ridges Basin Reservoir, under Alternative 4, represents the best storage opportunity.

4. The Tribe's acquisition of irrigation water rights and their subsequent change to M&I use would not grant the Tribes reserved water rights, like those to be stored under the A/LP. Such irrigation rights would be state appropriative water rights subject to the water laws and administrative procedures established by the State of Colorado. State water rights, unlike Reserved water rights, are subject to claims of abandonment or forfeiture under state water law. In addition, in a change of water rights action, the full value of a reserved right, but not that of a State appropriative right, may be changed. Therefore, at the end of the 30 years of buying land

WC5-5 The cost allocation provided in Attachment E has been updated to reflect the most current understanding of specific costs allocable to the City of Durango. The FSEIS has been modified to reflect the most recent change.

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and water under Alternative 6, the Tribes will have no assurance of their ability to obtain their full entitlement of water and no assurance of their ability to use the water for the intended Tribal purposes.

The Colorado Ute Tribes have rejected Alternative 6 because it does not meet the goals of the Settlement Act by providing the Colorado Ute Tribes an assured long-term, reliable M&I water supply. Refined Alternative 6 has much greater uncertainty and risk than the Preferred Alternative. Such uncertainty and risk includes uncertain time schedules, the uncertain costs, the uncertain terms and conditions, uncertain outcomes related to the need to change the use of the Tribally acquired irrigation water rights, including the uncertainty and risk that new Colorado case law and statutes may make changes of water rights actions even more difficult in the future than they are now. The Preferred Alternative, defined reservoir storage associated with Ridges Basin Reservoir, will provide a reliable and certain year-round supply of municipal and industrial water without the need for any change of water rights. Lack of support by the Colorado Ute Tribes for Alternative 6 could result in expensive, time-consuming and divisive litigation under the current Settlement Agreement.

Therefore, with the changes suggested in this letter, the Southwestern Water Conservation District supports Alternative 4 and encourages Reclamation to continue to consider Alternative 4, the choice of the Tribes, as the Preferred Alternative in the Final SEIS.

Sincerely,



Fred V. Kroeger
President, Board of Directors

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cc: District Board of Directors

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